



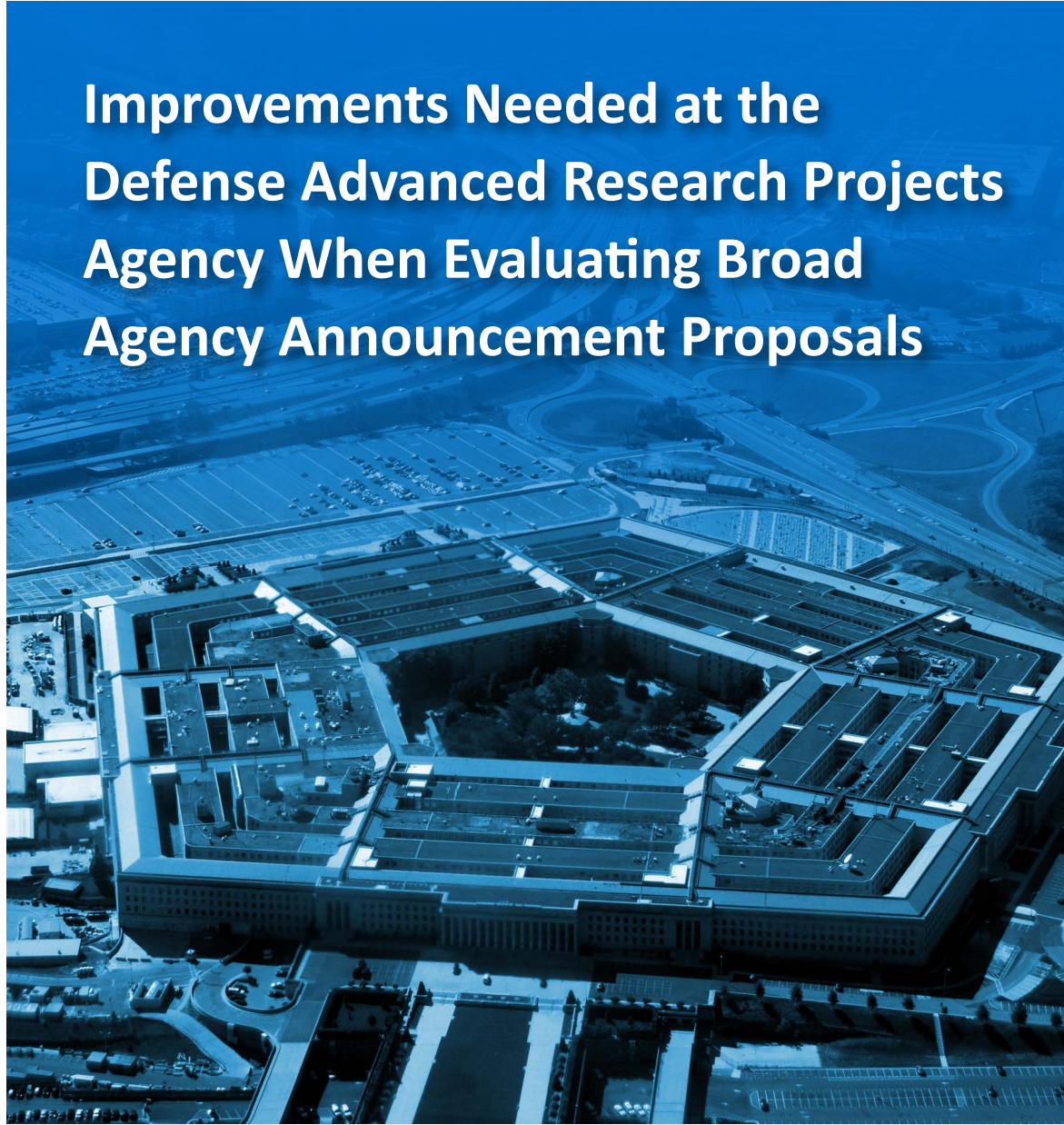
# INSPECTOR GENERAL

*U.S. Department of Defense*

SEPTEMBER 6, 2013



## Improvements Needed at the Defense Advanced Research Projects Agency When Evaluating Broad Agency Announcement Proposals



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>06 SEP 2013</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2013 to 00-00-2013</b>	
4. TITLE AND SUBTITLE <b>Improvements Needed at the Defense Advanced Research Projects Agency When Evaluating Broad Agency Announcement Proposals</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Department of Defense Inspector General, 4800 Mark Center Drive, Alexandria, VA, 22350-1500</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>46</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## Mission

*Our mission is to provide independent, relevant, and timely oversight of the Department of Defense that: supports the warfighter; promotes accountability, integrity, and efficiency; advises the Secretary of Defense and Congress; and informs the public.*

## Vision

*Our vision is to be a model oversight organization in the federal government by leading change, speaking truth, and promoting excellence; a diverse organization, working together as one professional team, recognized as leaders in our field.*

.....  
Fraud, Waste and Abuse  
**HOTLINE**  
1.800.424.9098 • [www.dodig.mil/hotline](http://www.dodig.mil/hotline)  
.....



# Results in Brief

## *Improvements Needed at the Defense Advanced Research Projects Agency When Evaluating Broad Agency Announcement Proposals*

September 6, 2013

### Objective

Our objective was to determine whether the Defense Advanced Research Projects Agency (DARPA) properly awarded contracts from broad agency announcements (BAAs). Specifically, we reviewed contracts awarded and funded by DARPA from DARPA BAAs published in March 2011 through September 30, 2012. We reviewed 36 contracts awarded from 9 BAAs, with a value of about \$426.4 million.

### Finding

DARPA personnel did not consistently adhere to the scientific review process and Federal Acquisition Regulation (FAR) requirements before awarding contracts from BAAs for 35 of 36 contracts. DARPA personnel did not fully implement the scientific review process or FAR requirements supporting the contract type selection. Specifically, DARPA personnel did not:

- prepare evaluation reports with detailed, substantive narratives or adequate Program Manager Summary Sheets to support selectability determinations for 28 contracts because personnel did not follow internal policies to complete reports;
- obtain contract funding document approvals for 12 contracts because personnel did not follow internal policies to obtain approval from the Scientific Review Official;

### Finding Continued

- provide required support for the contract type selection or obtain approvals for the contract type one level above the contracting officer for 32 cost-reimbursement contracts because DARPA personnel assumed the FAR requirements did not apply; and
- determine the adequacy of the contractors' accounting systems for 13 of the 32 cost-reimbursement type contracts because personnel provided inadequate or no support for the adequacy of the systems.

Although we did not identify any contracts that DARPA personnel should not have awarded, DARPA may not be able to justify that personnel adequately substantiated proposal selections. In addition, contracting personnel increased DARPA's contracting risks when issuing cost-reimbursement contracts.

### Recommendations

We recommend that the Director, Defense Advanced Research Projects Agency, establish controls to verify scientific review process documentation is adequate. We recommend also reemphasizing internal requirements for approval of funding documentation, requirements within the cost-reimbursement interim rule, and the Federal Acquisition Regulation requirement to appropriately complete the determination of the adequacy of the contractor's accounting system.

### Management Comments and Our Response

Management comments were responsive to the recommendations. DARPA agreed to issue guidance and implement training in response to the recommendations. Please see the Recommendations Table on the next page.



## ***Recommendations Table***

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Defense Advanced Research Projects Agency		1, 2, 3, 4, and 5



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

September 6, 2013

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
DIRECTOR, DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

SUBJECT: Improvements Needed at the Defense Advanced Research Projects Agency  
When Evaluating Broad Agency Announcement Proposals  
(Report No. DODIG-2013-126)

We are providing this report for your information and use. Of the 36 contracts reviewed, valued at about \$426.4 million, Defense Advanced Research Projects Agency (DARPA) personnel did not consistently adhere to scientific review process and Federal Acquisition Regulation requirements before awarding contracts from broad agency announcements for 35 contracts, valued at about \$424.6 million. As a result, DARPA may not be able to justify that technical office personnel adequately substantiated proposal selections and increased contracting risks when issuing cost-reimbursement contracts.

We considered management comments on a draft of this report when preparing the final report. Comments from DARPA conformed to the requirements of DoD Directive 7650.3; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

*Jacqueline L. Wiccarver*  
Jacqueline L. Wiccarver  
Assistant Inspector General  
Acquisition, Parts, and Inventory

# Contents

---

## Introduction

Objective	1
Defense Advanced Research Projects Agency	1
Criteria, Guidance, and Processes Related to Broad Agency Announcements	2
Cost-Reimbursement Interim Rule	5
Review of Internal Controls	6

## Finding. Better Controls and Practices Needed When Evaluating Broad Agency Announcement Proposals 7

Implementation of the Scientific Review Process Needs Improvement	8
Compliance With the Cost-Reimbursement Interim Rule Was Inadequate	13
Recommendations, Management Comments, and Our Response	17

## Appendixes

Appendix A. Scope and Methodology	20
Universe and Sample Information	21
Review of Documentation and Interviews	21
Use of Computer-Processed Data	22
Use of Technical Assistance	22
Prior Coverage	23
Appendix B. Contracts Reviewed	24
Appendix C. Review of Broad Agency Announcements	26
Appendix D. Federal Acquisition Circular 2005-50 Issued on March 16, 2011	28
Appendix E. Deficiencies Identified in Contracts Reviewed	33

## Management Comments

Defense Advanced Research Projects Agency Comments	35
--	----

## Acronyms and Abbreviations 38

# Introduction

---

## Objective

Our objective was to determine whether the Defense Advanced Research Projects Agency (DARPA) properly awarded contracts from broad agency announcements (BAAs). Specifically, we reviewed contracts awarded and funded by DARPA from BAAs issued by DARPA. This is one in a series of audits pertaining to DARPA. See Appendix A for a discussion of the scope and methodology and prior coverage.

## Defense Advanced Research Projects Agency

### ***Mission and Organization***

DoD Directive 5105.15, “Department of Defense Advanced Research Projects Agency,” created DARPA as the Advanced Research Projects Agency (ARPA) in 1958. Since its creation in 1958, the agency changed its name from ARPA to DARPA multiple times. On February 17, 1995, DoD Directive 5134.10, “Defense Advanced Research Projects Agency (DARPA),” established DARPA in its current form. The Directive states DARPA’s mission is to serve as the central research and development organization of DoD with a primary responsibility to maintain U.S. technological superiority over potential adversaries. Furthermore, the Directive established DARPA as an agency of DoD under the direction, authority, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Director, Defense Research and Engineering.<sup>1</sup>

### ***Broad Agency Announcements and Contracts Reviewed***

DARPA personnel provided a list consisting of 84 contracts awarded from 29 BAAs, with a value including options of about \$649.1 million. Our scope included contracts awarded by DARPA from BAAs issued by DARPA published in March 2011 through September 30, 2012. We selected a nonstatistical sample of 36 contracts awarded from 9 BAAs, with a total contract value at award including options of about \$426.4 million. We selected a sample including a mix of contracts with BAAs issued at different times, different contract values, and different contract types. Within the contract selection, DARPA personnel issued 32 cost-reimbursement type contracts, valued at about \$414.1 million at award including options, and 4 firm-fixed-price (FFP) contracts, valued at about \$12.3 million at award including options. See Appendix B for a table of the contracts reviewed.

---

<sup>1</sup> DoD Directive 5134.10 “Defense Advanced Research Projects Agency (DARPA),” issued May 7, 2013, updates the title for the Director, Defense Research and Engineering, to the Assistant Secretary of Defense for Research and Engineering.



## Criteria, Guidance, and Processes Related to Broad Agency Announcements

DARPA internal policy provides guidance supplemental to the Federal Acquisition Regulation (FAR) that describes the processes and procedures for the issuance of a BAA for soliciting proposals, evaluating and selecting proposals received in response to BAAs, and documenting the results of their review. DARPA Instruction No. 20, “Soliciting, Evaluating, and Selecting Proposals under Broad Agency Announcements and Research Announcements,” February 10, 2011, (DI No. 20) authorizes the issuance of the “DARPA Guide to Broad Agency Announcements and Research Announcements (RAs),” February 2011 (DARPA Guide to BAAs and RAs). The DARPA Guide to BAAs and RAs implements the processes and procedures established under DI No. 20, including how to prepare and process a BAA and how to evaluate proposals received in response to BAAs for potential contract award(s).

### ***Broad Agency Announcement Criteria and Guidance***

FAR 35.016, “Broad Agency Announcement,” describes the procedures for the use of BAAs through peer or scientific reviews. FAR 35.016(a) “General,” explains that BAAs are:

for the acquisition of basic and applied research and that part of development not related to the development of a specific system or hardware procurement. BAA's may be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique shall only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

An element of FAR 35.016(b)(2) requires that the BAAs describe the method of evaluation for selecting the proposals. See Appendix C for a discussion of BAAs.

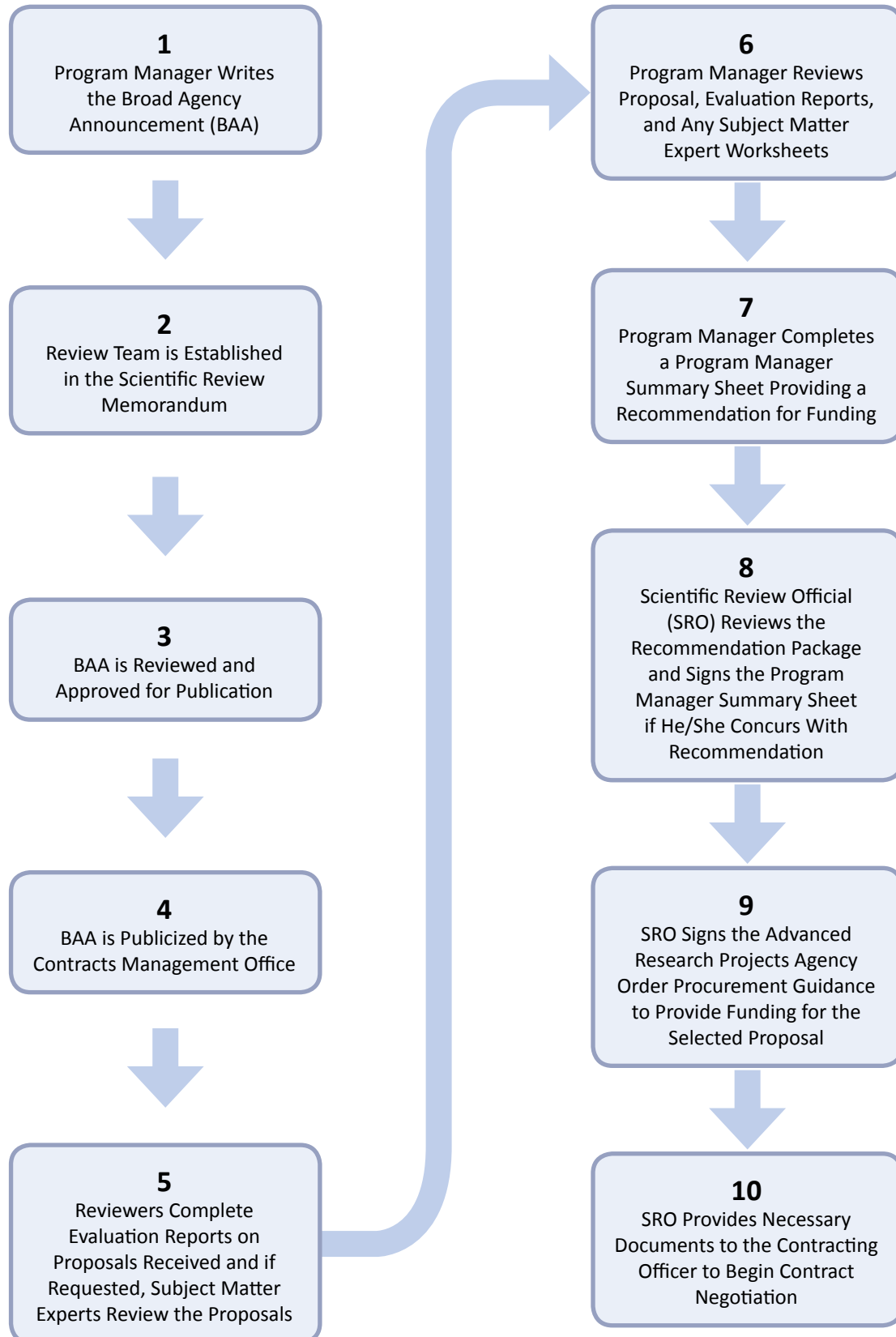
DARPA Contracts Management Office (CMO) personnel primarily announce research and development opportunities through two types of solicitation methods: BAAs or RAs, and Requests for Proposal. CMO personnel advertised most of the research and development opportunities through BAAs. After the CMO personnel publicize the BAAs, proposers submit their proposals to the DARPA technical office personnel who begin evaluating and selecting proposals. (See the Figure on page 4 for a flowchart of the process for awarding contracts from broad agency announcements, specifically boxes 1 through 4 for BAA related steps.)

## ***Process for Awarding Contracts from Broad Agency Announcements***

DARPA personnel awarded contracts from BAAs using a scientific review process method of evaluation to determine which proposal(s) should receive funding. For DARPA's scientific review process, personnel use the evaluation criteria detailed in the BAA as the basis for all scientific reviews. The DARPA Guide for BAAs and RAs requires DARPA technical office personnel to include three mandatory evaluation criteria in each BAA. Technical office personnel can include, at their discretion, additional evaluation criteria in each BAA. Using the evaluation criteria detailed in the BAA, the reviewers evaluate the proposal(s) to make a determination of the proposal's selectability (selectable or non-selectable). Each reviewer documents his or her evaluation and proposal selectability determination within an evaluation report for each proposal. The program manager can consult with subject matter experts. Reviewers and subject matter experts may include personnel from outside of DARPA; however, reviewers must be Government personnel. (See the Figure on page 4 Box 5)

The program manager reviews the proposal, all reviewer evaluation reports, and any subject matter expert worksheets and determines which proposal(s) best meet the BAA program objectives. DARPA hires program managers from various research and development communities to pursue its research. The program manager recommends the proposal(s) for funding to the Scientific Review Official (SRO) within a Program Manager Summary Sheet. (See the Figure on page 4 Boxes 6 and 7) The program manager compiles a recommendation package including all reviewer evaluation reports, any subject matter expert worksheets, and the Program Manager Summary Sheet and forwards this package to the SRO for his or her concurrence.

The SRO reviews the recommendation package documents to ensure the program manager adequately justified and documented the rationale for selecting proposal(s) for award. The SRO signs the Program Manager Summary Sheet to indicate concurrence with the program manager's selection. Then the SRO signs the ARPA Order Procurement Guidance to show final concurrence with funding the selected proposal(s) and indicating that funds are available for the effort. The SRO then provides the proposal, recommendation package, ARPA Order Procurement Guidance, and other necessary documents to the contracting officer to begin contract negotiation for a potential contract award. (See the Figure on page 4 Boxes 8 through 10)

*Figure. Flowchart of Process for Awarding Contracts from Broad Agency Announcements*

## Cost-Reimbursement Interim Rule

Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” section 864, “Regulations on the Use of Cost-Reimbursement Contracts,” October 14, 2008, requires FAR revisions regarding the documentation of decisions and approvals necessary before issuance of other than FFP contracts. Federal Acquisition Circular 2005-50, issued March 16, 2011, implemented the required revisions on an interim basis. The cost-reimbursement interim rule was effective immediately. Federal Acquisition Circular 2005-50 amended portions of FAR Part 7, “Acquisition Planning,” FAR Part 16, “Types of Contracts,” and FAR Part 42, “Contract Administration and Audit Services.” The final rule was published in the Federal Register on March 2, 2012, without significant changes. See Appendix D for a copy of the cost-reimbursement interim rule.

The cost-reimbursement interim rule requires that other than FFP contracts include support for the contract type selected and approval at least one level above the contracting officer in the acquisition planning documentation or elsewhere in the file if a formal acquisition plan was not required. FAR 16.103(d)(1)(i) and (ii) states that the contract file must support why the particular contract type was selected, including why the selected type must be used to meet the agency need, and a discussion of the Government’s additional risks and the burden to manage the selected type. The interim rule did not change the requirement for FFP research and development contracts to include support for the contract type selected in the contract file; however, FFP contracts were exempt from other requirements of the rule. FAR 16.103(d)(1)(iv) applies only to “other than a firm-fixed price contract” and states at a minimum, documentation should include:

- an analysis of why the selected contract type is appropriate,
- rationale detailing the particular circumstances and reasoning essential to support the selected contract type, and
- a discussion of the actions planned to minimize the use of other than FFP contracts and to transition to FFP contracts for future acquisitions for the same requirement.

We considered the final requirement as adequately documented if the contract file included an explanation of the potential to transition or a justification as to why the particular effort will never be able to transition to a FFP contract. In addition, contracting personnel must document that adequate resources are available to manage the

contract type selected for cost-reimbursement type contracts. We considered the assignment of a contracting officer's representative and completion of appropriate training by the representative before contract award as documenting that adequate resources were available. Finally, contracting personnel were required to determine the adequacy of the contractor's accounting system during the entire period of performance for cost-reimbursement contracts. We reviewed only the contracting officer's determination of the contractor's accounting system before the contract award. If the contracting officer determines the accounting system is inadequate, they should not issue a cost-reimbursement contract.

## Review of Internal Controls

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for implementing DARPA policy requirements when completing the scientific review process. Specifically, DARPA technical office personnel did not follow the procedures to verify the adequacy of evaluation reports and Program Manager Summary Sheets or that the SRO or delegate SRO signed the ARPA Order Procurement Guidance document approving contract funding.

Additionally, we identified internal control weaknesses for implementing the changes required by the interim rule regarding cost-reimbursement type contracts. Specifically, DARPA CMO personnel did not have procedures to document the potential of cost-reimbursement contracts to transition to FFP contracts, perform the required approval of the contract type at least one level above the contracting officer, and verify that the contractor's accounting system was adequate to permit timely development of cost data before agreeing to a contract type other than FFP. We will provide a copy of the report to the senior official in charge of internal controls in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and in the Defense Advanced Research Projects Agency.



## Finding

### Better Controls and Practices Needed When Evaluating Broad Agency Announcement Proposals

Of the 36 contracts reviewed, valued at award including options of about \$426.4 million, DARPA personnel did not consistently adhere to scientific review process and FAR requirements before awarding contracts from BAAs for 35<sup>2</sup> contracts, valued at award including options of about \$424.6 million. Specifically, personnel awarded contracts from BAAs without fully implementing the scientific review process by not:

- preparing reviewer evaluation reports that contained detailed narrative or program manager summary sheets that adequately supported proposal selectability determinations for 28 of 36 contracts because evaluation reviewers and DARPA technical office personnel did not follow internal policies; and
- obtaining approvals for DARPA funding documents for 12 of 36 contracts because technical office personnel did not follow internal policies.

In addition, DARPA CMO personnel did not fully implement FAR requirements supporting the contract type selection by not:

- providing all required support for the contract type selection for 32 of 36 contracts because CMO personnel assumed the requirements did not apply to research and development contracts;
- obtaining approvals for the contract type at least one level above the contracting officer for all 32 cost-reimbursement contracts because CMO personnel assumed the requirement did not apply since they did not complete acquisition plans; and
- determining the adequacy of the contractor's accounting system for 13 of 32 cost-reimbursement contracts because CMO personnel had inadequate or no support for the adequacy of the contractors' accounting systems.

Although we did not identify any contracts that DARPA personnel should not have awarded, DARPA may not be able to justify that technical office personnel adequately substantiated proposal selections. In addition, CMO personnel increased DARPA's contracting risks, such as the increased risk of the Government paying unnecessary costs, when issuing cost-reimbursement contracts.

<sup>2</sup> A contract may have more than one deficiency.

## Implementation of the Scientific Review Process Needs Improvement

DARPA technical office personnel did not fully implement the scientific review process for 31 of 36 contracts,<sup>3</sup> with a total contract value including options at award of about \$343.3 million, because evaluation reviewers and program managers did not follow internal policies for completing detailed evaluation reports and program manager summaries, as required. DARPA personnel complied with internal policies when establishing the scientific review team. In addition, evaluation reviewers evaluated the proposals against the criteria established in the BAA; however, they did not prepare evaluation reports that contained detailed narrative. Program managers did not prepare summaries that adequately supported proposal selectability determinations, as required by the DARPA Guide to BAAs and RAs, for 28 of 36 contracts. Additionally, DARPA technical office personnel did not obtain appropriate approvals for DARPA funding documents for 12 of 36 contracts because they did not follow internal policies requiring the SRO to approve the ARPA Order Procurement Guidance funding documents. As a result, DARPA may not be able to justify that technical office personnel adequately substantiated proposal selections. See Appendix E for deficiencies identified in contracts reviewed.

### ***Adequate Compliance With Internal Policies When Establishing the Scientific Review Team***

DARPA technical office personnel complied with scientific review process requirements when establishing the scientific review team in accordance with DARPA policy. For all 36 contracts reviewed, DARPA representatives assigned different personnel to fulfill DARPA program manager and SRO positions. Those program managers and SROs appropriately signed corresponding scientific review memorandums, with only a few exceptions. In addition, DARPA personnel assigned a program manager and at least two additional evaluation reviewers for each proposal. Personnel correctly identified evaluation reviewers in the scientific review memorandums, and these reviewers prepared evaluation reports, except in a few cases. When subject matter experts reviewed the proposals, personnel also appropriately identified them in the scientific review memorandum, with one exception. We did not consider these minor exceptions identified to be systemic problems in the scope of our review; therefore, we are not making a recommendation.

---

<sup>3</sup> We counted a contract as deficient only once when the evaluation reports did not contain detailed, substantive narrative to support proposal selectability determinations; when program manager summaries were inadequate; when funding approvals were inadequate; or any combination of the three.

## ***Lacking Support for Selectability Determinations***

Evaluation reviewers and program managers prepared reports and summary sheets, respectively that lacked the required support for selectability determinations. Specifically, evaluation reviewers did not prepare detailed narratives for at least one of the evaluation criteria in at least one reviewer's evaluation report. In addition, one program manager did not prepare Program Manager Summary Sheets to adequately support funding recommendations.

## ***Completion of Evaluation Reports Must Be Consistent***

Evaluation reviewers prepared and submitted evaluation reports to DARPA program managers that did not provide a detailed, substantive narrative for at least one of the evaluation criteria in at least one reviewer's evaluation report for 28 of the 36 contracts. This occurred because evaluation reviewers did not follow internal policies requiring evaluation reviewers to complete detailed evaluation reports, as required by the DARPA Guide to BAAs and RAs. The DARPA Guide to BAAs and RAs states that all scientific reviews are based on evaluation criteria detailed in the published BAA, and the results of each scientific review must be documented in an evaluation report. Reviewers should include in the evaluation report detailed, substantive narrative with a description of his or her findings relative to each published evaluation criteria that ultimately supports the reviewer's proposal selectability determination. The guidance further details that "adjectival descriptions" such as "Good" or "Excellent," without further detailed narrative elaboration, are not sufficient for these reviews. Evaluation reviewers included "adjectival descriptions," such as "Good" or "Excellent," in the evaluation reports and did not address each of the evaluation criteria. See Table 1 for details of DARPA contracts containing evaluation report deficiencies.

*Table 1. Contracts With Evaluation Report Deficiencies*

Deficiency Identified	Total Number of Contracts Affected*
Evaluation report contained non-detailed responses	21
Evaluation report did not include a response for some of the evaluation criteria	14
Evaluation report contained only "adjectival descriptions," such as "Good" or "Excellent"	9

\*A contract may have more than one deficiency.

For example, one evaluation reviewer for four contracts issued from DARPA-BAA-11-40 consistently provided evaluation reports that lacked detailed, substantive narrative. Specifically, the reviewer stated (or included similar language) the "cost is realistic

for the work proposed” for the “Cost Realism” evaluation criteria for three of the four contracts; however, the reviewer did not provide supporting information as to why the proposed costs were realistic. Additionally, the same evaluation reviewer also provided evaluations that lacked detailed, substantive narrative for the “Potential Contribution and Relevance to the DARPA Mission” and the “Plans and Capability to Accomplish Technology Transition” evaluation criteria.

- For the “Potential Contribution and Relevance to the DARPA Mission” evaluation criteria, the evaluation reviewer consistently stated (or included similar language), “This effort is extremely relevant and will make a significant contribution to the DARPA mission.” However, the reviewer did not provide supporting information as to how the effort was relevant and would contribute to the DARPA mission.
- For the “Plans and Capability to Accomplish Technology Transition” evaluation criteria, the evaluation reviewer stated (or included similar language), “Proposers have plans and a proven track record that points to successful transition of the technology they are developing.” However, the reviewer did not provide supporting information as to what specific plans the proposers have that will successfully transition the developing technology.

In another instance, three evaluation reviewers did not provide a response for the “Plans and Capability to Accomplish Technology Transition” evaluation criteria for five contracts. DARPA personnel assigned the same reviewers to the five proposals that resulted in five contracts for DARPA-BAA-12-07. The program manager specified in DARPA-BAA-12-07 the five evaluation criteria that evaluation reviewers must review for each proposal, but the reviewers only responded to four. The Director, DARPA should establish controls to verify that technical office personnel meet requirements for providing detailed, substantive narratives in evaluation reports that adequately support proposal selectability determinations, requesting revisions to evaluation reports when necessary, and conducting training to reemphasize this internal requirement.

### *Non-Selectable Proposal Selectability Determinations*

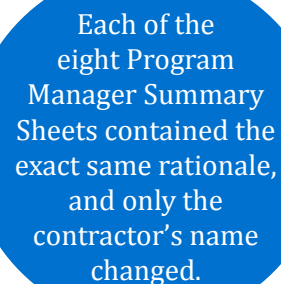
Each of the evaluation reviewers considered the proposals selectable for 29 of the 36 contracts. For seven contracts, at least one evaluation reviewer documented in his or her evaluation report that they considered the proposal as non-selectable. The DARPA Guide to BAAs and RAs states the program manager may disagree with the rationale provided in an evaluation report; however, he or she must specifically

document the rationale for overriding the reviewer's selectability determination in the Program Manager Summary Sheet. The applicable program manager for each of the seven contracts did not document his or her rationale for overriding the reviewer's determination in the Program Manager Summary Sheet. For six of the seven contracts, the majority of the evaluation reviewers documented in their evaluation reports that they considered the proposal as "selectable."

For contract HR0011-12-C-0053, two of the three evaluation reviewers determined the proposal as "non-selectable" for one contract. The program manager as the third reviewer overrode the other reviewers' selectability determinations and recommended the proposal for funding. The program manager prepared a Scientific Review Outbrief package showing after a Scientific Review Board meeting, the board considered the proposal as highly competitive. In addition, the board suggested four approaches recommending different sets of proposals that together would meet the goal of the BAA, and in each of the four options, they recommended the proposal for funding as part of each package. Since only one contract had a majority of "non-selectable" determinations and that contract had additional support for selection of that proposal, we are not making a recommendation.

### *Program Manager Summaries Included Inadequate Rationale*

DARPA program managers did not provide adequate rationale within their program manager summaries to support funding recommendations for 8 of 36 contracts. This occurred because program managers did not follow internal policies requiring them to complete detailed Program Manager Summary Sheets, as required by the DARPA Guide to BAAs and RAs. The DARPA Guide to BAAs and RAs provides a sample Program Manager Summary Sheet for DARPA program managers to follow. A DARPA program manager prepared inadequate Program Manager Summary Sheets for eight contracts issued from DARPA-BAA-11-54. Although the program manager followed the general format outlined in DARPA's internal guidance, he did not provide adequate rationale to support proposal selectability and funding recommendations. Each of the eight Program Manager Summary Sheets contained the exact same rationale, and only the contractor's name changed. Specifically, each Program Manager Summary Sheet stated, "Rationale for this decision is as follows: [Contractor's name] has proposed work that is of value to the DARPA mission. [Contractor's name] has demonstrated they have the subject matter expertise and resources to successfully



Each of the eight Program Manager Summary Sheets contained the exact same rationale, and only the contractor's name changed.



complete work proposed.” However, the program manager did not provide any other supporting information as to how the proposed work would provide value to DARPA’s mission and what resources the contractor had to successfully complete the proposed work.

During the exit conference on March 20, 2013, the DARPA Special Assistant, CMO, stated that DARPA was in the process of developing agency-wide training for the scientific review process. As of March 20, 2013, DARPA personnel provided division-specific scientific review training, which did not provide a standardized reviewers’ process. The Director, DARPA, should establish controls to verify that technical office personnel meet requirements for providing Program Manager Summary Sheets that adequately support proposal selectability determinations, requesting revisions to Program Manager Summary Sheets when support is not adequate, and conducting training to reemphasize this internal requirement.

### ***Inappropriate Funding Document Approvals***

DARPA technical office personnel did not obtain appropriate funding document approvals for 12 of the 36 contracts because they did not follow internal policies requiring the SRO or delegate SRO to approve ARPA Order Procurement Guidance funding documents. The DARPA Guide to BAAs and RAs states that the SRO (or delegate SRO) reviews the recommendation package to ensure that the program manager has adequately justified and documented a rationale for selecting proposals for award. The SRO must document in writing the substantive rationale supporting any decision other than a simple concurrence with the program manager’s recommendation. Additionally, the SRO indicates his or her final concurrence with funding the selected proposal(s) by providing his or her signature on the ARPA Order Procurement Guidance for each proposal, indicating that funds are available for the effort.

For the 12 contracts, the appropriate SRO approved Program Manager Summary Sheets. However, of those contracts, the ARPA Order Procurement Guidance funding documentation for 11 contracts were signed by a DARPA representative no longer serving as the proposal’s SRO, and 1 contract was signed by the “Office Director” instead of the SRO. The Director, DARPA, should reemphasize the internal requirement requiring Scientific Review Officials and Delegate Scientific Review Officials to approve the Advanced Research Projects Agency Order Procurement Guidance document for contract funding.

## Compliance With the Cost-Reimbursement Interim Rule Was Inadequate

DARPA CMO personnel did not fully implement FAR requirements related to the cost-reimbursement interim rule for 32 of 36 contracts, with a total contract value at award with options of about \$414.1 million, because personnel:

- assumed the contract type selection support requirements did not apply to research and development contracts;
- assumed the requirement to obtain approvals for the contract type at least one level above the contracting officer did not apply because they did not complete acquisition plans for the 32 cost-reimbursement type contracts; and
- provided inadequate or no support for the adequacy of the contractors' accounting systems for 13 of the 32 cost-reimbursement type contracts.

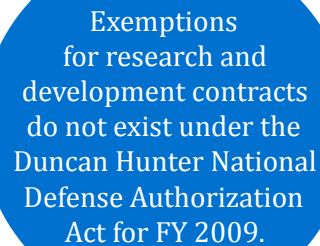
DARPA CMO personnel issued 4 of the 36 contracts as FFP. FFP contracts are exempt from some of the cost-reimbursement criteria. We did not identify any problems with the applicable criteria for the four FFP contracts. In addition, CMO personnel appropriately justified the type of contract selected for all 36 contracts and appointed contracting officer's representatives before contract award for 30 of the 32 cost-reimbursement type contracts.

### ***Additional Required Support Needed for Contract Type Selections***

DARPA CMO personnel appropriately justified the use of a cost-reimbursement type or FFP research and development contract; however, they did not provide all the required support within the contract file when selecting the contract type, as required by FAR 16.103, "Negotiating contract types," for 32 of the 36 contracts. CMO personnel included documentation in the contract file for all 36 contracts addressing why the contract type selected met the agency need and the additional risks and burden on the Government to manage the contract type selected. We determined that the contracting officer's rationale within the price negotiation memorandum and the documentation showing the steps taken to mitigate the risks of a cost-type contract were acceptable to fulfill this requirement. Furthermore, for all 32 cost-reimbursement contracts, CMO personnel included in the contract file an analysis documenting why the use of other than a FFP contract was appropriate and "rationale that detailed the particular facts and circumstances . . . and associated reasoning essential to support the contract type selected," as required by FAR 16.103(d)(1)(iv)(A) and (B).

Although DARPA CMO personnel adequately supported the cost-reimbursement contract type selections, personnel did not provide a discussion of the actions planned to minimize the use of other than FFP contracts on future acquisitions for the same requirement and to transition to FFP contracts to the maximum extent practicable, as required by FAR 16.103(d)(1)(iv)(D). During a discussion with DARPA personnel, the Special Assistant, CMO, explained that DARPA determined this was not applicable because its efforts are during the very beginning stages of research, otherwise known as Science and Technology. DARPA is advancing the state of the art, not procuring the same thing repeatedly. In addition, personnel explained that the work DARPA performs is limited in scope and does not go into the development phase within DARPA, so the work would never transition into a FFP contract. DARPA transitions promising projects to development outside of DARPA.

The Federal Register, volume 77 number 42, March 2, 2012, discussed the comments obtained in response to the cost-reimbursement interim rule and made the rule into a final rule at that time. One commenter recommended that the final rule exempt research and development contracts from the requirements. However, the response explained exemptions for research and development contracts do not exist under the Duncan Hunter National Defense Authorization Act for FY 2009. The response also stated that research and development contracts are considered high-risk contracts. We consider the requirement adequately addressed if the contract file included an explanation of the plans to transition future acquisitions to FFP or an explanation of why the particular effort cannot transition in the future to FFP. The Director, DARPA, should establish procedures requiring CMO personnel to provide written support within the contract file explaining either the plans to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement or why the particular effort cannot transition in the future within DARPA to firm-fixed-price contracts, in accordance with FAR 16.103(d)(1)(iv)(D).



Exemptions  
for research and  
development contracts  
do not exist under the  
Duncan Hunter National  
Defense Authorization  
Act for FY 2009.

### ***Proper Approval Needed for Contract Type Selection***

DARPA CMO personnel did not obtain the required approval of the contract type at least one level above the contracting officer for all 32 cost-reimbursement type contracts as required by FAR 16.301-3(a)(2). FAR 16.301-3(a)(2) requires a written acquisition plan to be approved and signed at least one level above the contracting officer.

FAR 16.301-2(b) states the contracting officer must document his or her rationale for the contract type selection in the written acquisition plan and have that plan approved at least one level above the contracting officer. The contracting officer must document the rationale in the contract file if a written acquisition plan is not required.

Defense Federal Acquisition Regulation Supplement 207.103(d)(i)(A) requires written acquisition plans for acquisitions for development, as defined in FAR 35.001, "Definitions." During a meeting with the audit team, the Special Assistant, CMO, stated that DARPA does not prepare acquisition plans because DARPA's typical research and development efforts do not meet the definition of development; therefore, acquisition plans are not required for the majority of DARPA's Science and Technology efforts. Then, the Director, CMO, explained that if a contract is greater than \$5 million, the Director, CMO, the Deputy Director, or a Division Director (if the contracting officer is not a Division Director) will review the contract file and provide an approval that the contract file is adequate.

DARPA CMO personnel included an approval printout within the contract file for 17 of the cost-reimbursement type contracts as shown in Table 2. This approval printout showed that the Division Director; Deputy Director, CMO; or Director, CMO reviewed the contract file before approving the award of the contract; however, the printout did not provide support that the appropriate personnel specifically reviewed the selection of the contract type.

*Table 2. Contract Files That Provided The Approval Printout*

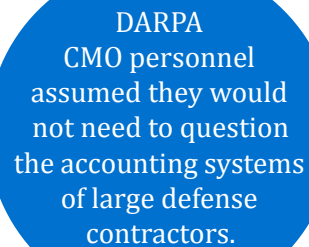
HR0011-11-C-0142	HR0011-12-C-0092
HR0011-12-C-0014	HR0011-12-C-0093
HR0011-12-C-0015	HR0011-12-C-0095
HR0011-12-C-0016	HR0011-12-C-0074
HR0011-12-C-0017	HR0011-12-C-0086
HR0011-11-C-0138	HR0011-12-C-0117
HR0011-12-C-0039	HR0011-12-C-0123
HR0011-12-C-0052	HR0011-13-C-0005
HR0011-12-C-0083	

"Statement of CMO Procedure Number 10-01," effective September 1, 2010, states all contract actions greater than or equal to \$5 million require a higher-level review within the CMO. The Division Director, at his or her discretion, can review contract actions below this threshold. The policy explains the appropriate Division Director should complete reviews for contract actions above the threshold. If the contracting

officer is the Division Director, the Director, CMO or Deputy Director, CMO shall review the contract action. The contract file review for the contracts at or above \$5 million does not satisfy the cost-reimbursement interim rule and its final rule requirement, since the interim rule does not have any dollar thresholds. The Director, DARPA, should establish procedures requiring contracting officers to obtain approval of the cost-reimbursement contract type at least one level above the contracting officer.

### ***Adequacy of the Contractors' Accounting Systems Not Determined***

DARPA CMO personnel did not verify that the contractors' accounting systems were adequate to permit timely development of cost data before agreeing to a contract type other than FFP for 13 of the 32 cost-reimbursement type contracts, as required by FAR 16.104(i), "Adequacy of the contractor's accounting system." During discussions with the audit team, DARPA CMO personnel assumed they would not need to question the accounting systems of large defense contractors. However, the Special Assistant, CMO, stated that CMO personnel are expected to review the adequacy of the accounting system.



DARPA CMO personnel assumed they would not need to question the accounting systems of large defense contractors.

DARPA CMO personnel did not include adequate information in the contract files supporting the adequacy of the contractors' accounting systems for 13 contracts. FAR 15.406-3(a)(4) states that the price negotiation memorandum shall include "the current status of any contractor systems ([for example], purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation." Although the FAR states that the price negotiation memorandum should include this information, we considered the contracting officer to have verified the adequacy of the accounting system if the contract file included additional support. Additional support included documentation such as reports from the Defense Contract Audit Agency or the Defense Contract Management Agency that stated the accounting system was adequate or provided an adequate description in the contract file of the determination that the accounting system was adequate. DARPA CMO personnel did not provide any information within the Price Negotiation Memorandum about the adequacy of the contractors' accounting systems for 6 of the 13 contracts. CMO personnel stated in the Price Negotiation Memorandums for 7 of the 13 contracts that the contractors' accounting systems were adequate; however, CMO personnel did not include support in the Price Negotiation Memorandum or supporting documentation in the contract file to substantiate the statement.



For example, for contracts HR0011-12-C-0058 and HR0011-12-C-0086, DARPA CMO personnel stated in documentation that they relied on disclosure statements from large federal contractors and certification reports from the contractor. In addition, DARPA personnel stated, “The presence of [Defense Contract Management Agency Forward Pricing Rate Recommendations] in and of itself suggests that the contractor in question has an approved accounting system.” However, the contracting officer did not document the adequacy of the accounting system. The Director, DARPA, should reemphasize to contracting officers the FAR requirement to appropriately complete and document the determination of the adequacy of the contractor’s accounting system in the contract file.

### ***Consistent Appointment of Contracting Officer’s Representative***

DARPA contracting officers appointed a contracting officer’s representative before contract award, with a few exceptions. The contracting officers appointed contracting officer’s representatives before contract award for 30 of 32 cost-reimbursement contracts. One contracting officer appointed a contracting officer’s representative 6 days after awarding contract HR0011-12-C-0019, although the contracting officer’s representative training certification was dated before the contracting officer awarded the contract. Another contracting officer appointed a contracting officer’s representative 1 month after awarding contract HR0011-12-C-0048. In this case, the contracting officer’s representative completed training 3 days before being appointed, which was still after the award of the contract. We did not consider this a systemic problem in the scope of our review; therefore, we are not making a recommendation.

## **Recommendations, Management Comments, and Our Response**

**We recommend that the Director, Defense Advanced Research Projects Agency:**

- 1. Establish controls to verify that technical office personnel meet internal requirements for providing:**
  - a. Detailed, substantive narratives in evaluation reports that adequately support proposal selectability determinations, requesting revisions to evaluation reports when necessary, and conducting training to reemphasize this internal requirement.**
  - b. Program Manager Summary Sheets that adequately support proposal selectability determinations, requesting revisions to Program Manager Summary Sheets when support is not adequate, and conducting training to reemphasize this internal requirement.**

### ***Acting Director, Defense Advanced Research Projects Agency Comments***

The Acting Director, DARPA, responding for the Director, DARPA, agreed, stating that DARPA would expand policies and procedures and provide additional training to members of the Scientific Review Team at key points in the scientific review process.

### ***Our Response***

Comments from the Acting Director, DARPA, were responsive and met the intent of the recommendations. No further comments were required.

2. **Reemphasize the internal requirement that Scientific Review Officials and Delegate Scientific Review Officials are required to approve the Advanced Research Projects Agency Order Procurement Guidance document for contract funding.**

### ***Acting Director, Defense Advanced Research Projects Agency Comments***

The Acting Director, DARPA, agreed with the intent of the recommendation. The Acting Director stated that DARPA recently transitioned to the Defense Agencies Initiative financial system that uses a Military Interdepartmental Purchase Request. The Acting Director stated that DARPA would improve internal controls relative to approval of Military Interdepartmental Purchase Requests.

### ***Our Response***

Comments from the Acting Director, DARPA, were responsive and met the intent of the recommendation. No further comments were required.

3. **Establish procedures requiring Contracts Management Office personnel to provide written support within the contract file explaining either plans to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement or why the particular effort cannot transition in the future within the Defense Advanced Research Projects Agency to firm-fixed-price contracts, in accordance with the Federal Acquisition Regulation 16.103(d)(1)(iv)(D).**

### ***Acting Director, Defense Advanced Research Projects Agency Comments***

The Acting Director, DARPA, agreed with the intent of the recommendation. The Acting Director stated that DARPA would establish a written procedure that would provide

the contracting officer with the option to include a memorandum for record in the contract file stating that no opportunity to transition to a firm-fixed-price contract existed.

### ***Our Response***

Comments from the Acting Director, DARPA, were responsive and met the intent of the recommendation. No further comments were required.

4. **Establish procedures requiring contracting officers to obtain approval of the cost-reimbursement contract type at least one level above the contracting officer, as required by the Federal Acquisition Regulation 16.301-3(a)(2).**

### ***Acting Director, Defense Advanced Research Projects Agency Comments***

The Acting Director, DARPA, agreed, stating that DARPA would establish procedures requiring contracting officers to obtain approval of cost-reimbursement contracts at least one level above the contracting officer.

### ***Our Response***

Comments from the Acting Director, DARPA, were responsive and met the intent of the recommendation. No further comments were required.

5. **Reemphasize to contracting officers the Federal Acquisition Regulation requirement to appropriately complete and document the determination of the adequacy of the contractor's accounting system in the contract file, as required by the Federal Acquisition Regulation 16.104(i), "Adequacy of the contractor's accounting system."**

### ***Acting Director, Defense Advanced Research Projects Agency Comments***

The Acting Director, DARPA, agreed. The Acting Director stated that DARPA would reemphasize the requirement in internal procedures and include the requirement for such documentation in a memorandum for record to be included in the official contract file.

### ***Our Response***

Comments from the Acting Director, DARPA, were responsive and met the intent of the recommendation. No further comments were required.

## Appendix A

---

### Scope and Methodology

We conducted this performance audit from November 2012 through July 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We announced this audit in response to the termination of the “Audit of the Defense Advanced Research Projects Agency’s Contracting Practices” because information was outdated. Our scope included contracts awarded by the Defense Advanced Research Projects Agency (DARPA) from broad agency announcements (BAAs) issued by DARPA that were published in March 2011 through September 30, 2012, excluding classified BAAs and contracts. We also excluded contracts awarded to educational institutions, because they have a separate set of criteria to follow. Our objective was to determine whether DARPA properly awarded contracts from BAAs. Our review focused on issuance of the BAAs, the selection of contracts through the scientific review process, and support for the selection of contract type.

To determine compliance with the cost-reimbursement interim rule and its final rule, our methodology when reviewing the contract files varied slightly from the specific interim rules. In cases where the rule required documentation in the acquisition plan, we expanded our review to the entire contract file because DARPA does not create acquisition plans. In addition, the rule states that if a written acquisition plan is not required, the documentation should still be included in the contract file. We determined whether contracting personnel determined that adequate resources were available to monitor the award by determining whether contracting personnel assigned a contracting officer’s representative to the contract before issuance. We reviewed the assignment of a contracting officer’s representative and whether the representative completed appropriate training before contract award, but we did not determine whether the person assigned had an appropriate workload, was appropriately geographically located to monitor the award, nor the adequacy of the contracting officer’s representatives assigned. We determined whether the contracting officer documented that the contractor’s accounting system was adequate at contract award and not during the entire period of contract performance as required by the cost-reimbursement interim rule. We reviewed the Price Negotiation Memorandum

and documentation within the contract file to determine whether the contracting officer determined that the accounting system was adequate, and whether the contracting officer provided an explanation on how he or she made the determination. We accepted audit reports from the Defense Contract Audit Agency and the Defense Contract Management Agency that discussed the adequacy of the accounting system as evidence that the contracting officer verified that the contractor had an adequate accounting system.

### ***Universe and Sample Information***

We requested that DARPA provide a list of contracts awarded from BAAs published by DARPA in March 2011 through September 30, 2012, excluding classified BAAs and contracts. We excluded classified BAAs and contracts because another DoD Office of Inspector General Component had announced a project reviewing classified BAAs and contracts at DARPA. DARPA provided a list consisting of 84 contracts awarded from 29 BAAs, with a value including options of about \$649.1 million. We excluded 16 contracts awarded to educational institutions, because they have a separate set of criteria to follow. From the remaining list, we selected a nonstatistical sample of 36 contracts awarded from 9 BAAs, with a total contract value at award including options of about \$426.4 million. We selected a sample including a mix of contracts with BAAs issued at different times, different contract values, and different contract types. Within the contract selection, DARPA issued 32 cost-reimbursement type contracts, valued at about \$414.1 million at award including options, and 4 firm-fixed-price contracts, valued at about \$12.3 million at award including options.

### ***Review of Documentation and Interviews***

We evaluated documentation against applicable criteria including:

- Federal Acquisition Regulation (FAR) Part 15, “Contracting by Negotiation”;
- FAR Part 16, “Types of Contracts”;
- FAR 35.016, “Broad Agency Announcement”;
- DARPA Instruction No. 20, “Soliciting, Evaluating, and Selecting Proposals under Broad Agency Announcements and Research Announcements,” February 10, 2011; and
- DARPA Guide to Broad Agency Announcements and Research Announcements (February 2011).

We also evaluated documentation against applicable criteria in the FAR revisions implemented by section 864 of the Duncan Hunter National Defense Authorization Act for FY 2009 and included in the Interim Rule Federal Register, Volume 76 Number 51, “Proper Use and Management of Cost Reimbursement Contracts.” The cost-reimbursement interim rule included revisions to:

- FAR Subpart 1.6, “Career Development, Contracting Authority, and Responsibilities”;
- FAR 2.101, “Definitions”;
- FAR Subpart 7.1, “Acquisition Plans”;
- FAR Subpart 16.1, “Selecting Contract Types”;
- FAR 16.301, “General”; and
- FAR 42.302, “Contract administration functions.”

We reviewed documentation provided by DARPA from the contract files. The documents reviewed included the BAAs, reviewer evaluation reports, program manager summaries, contracts, price negotiation memorandums, Defense Contract Audit Agency and Defense Contract Management Agency reports, contracting officer’s representative designation letters, contracting officer’s representative training certificates, and other documentation included in the contract file showing compliance with the criteria we used. We held discussions with DARPA Contract Management Office personnel at DARPA Headquarters in Arlington, Virginia, to discuss the BAAs and contracts within our review.

### ***Use of Computer-Processed Data***

We did not rely on computer-processed data to perform this audit.

### ***Use of Technical Assistance***

We held discussions with personnel from the DoD Office of Inspector General’s Quantitative Methods Division during our planning phase to determine the number of BAAs and contracts that should be reviewed. The Quantitative Methods Division determined that a nonstatistical sample was the best way to proceed and approved the methodology used by the audit team to select the nonstatistical sample of 36 contracts from 9 BAAs.



## ***Prior Coverage***

During the last 5 years, the Department of Defense Inspector General (DoD IG) issued four reports discussing the Defense Advanced Research Projects Agency and the Interim Rule for cost-reimbursement contracts. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

### ***DoD IG***

Report No. DODIG-2013-120, “Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts,” August 23, 2013

Report No. DODIG-2013-106, “Defense Advanced Research Projects Agency Properly Awarded Contracts for Disc-Rotor Research and Development,” July 19, 2013

Report No. DODIG-2013-059, “Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts,” March 21, 2013

Report No. DODIG-2013-039, “Defense Advanced Research Project Agency’s Ethics Program Met Federal Government Standards,” January 24, 2013

## Appendix B

### Contracts Reviewed

	Contract	Contract Award Date	BAA	Original Publication Date of BAA	Value of Contract at Award, Including Options	Contract Type
1	HR0011-11-C-0142	10/1/2011	DARPA-BAA-11-40	4/4/2011	\$ 5,059,188	CPFF
2	HR0011-11-C-0150	9/30/2011	DARPA-BAA-11-40	4/4/2011	3,227,000	FFP
3	HR0011-12-C-0014	10/13/2011	DARPA-BAA-11-40	4/4/2011	59,154,152	CPFF
4	HR0011-12-C-0015	10/12/2011	DARPA-BAA-11-40	4/4/2011	39,357,452	Cost
5	HR0011-12-C-0016	10/24/2011	DARPA-BAA-11-40	4/4/2011	41,536,592	CPFF
6	HR0011-12-C-0017	1/13/2012	DARPA-BAA-11-40	4/4/2011	9,413,598	CPFF
7	HR0011-11-C-0138	9/23/2011	DARPA-BAA-11-46	4/22/2011	5,999,672	CPFF
8	HR0011-11-C-0139	9/30/2011	DARPA-BAA-11-46	4/22/2011	37,348,162	CPFF
9	HR0011-12-C-0019	10/20/2011	DARPA-BAA-11-46	4/22/2011	33,314,126	Cost and CPFF
10	HR0011-12-C-0048	3/16/2012	DARPA-BAA-11-46	4/22/2011	5,948,961	CPFF
11	HR0011-12-C-0028	6/11/2012	DARPA-BAA-11-54	5/5/2011	1,045,966	Cost Share
12	HR0011-12-C-0034	5/29/2012	DARPA-BAA-11-54	5/5/2011	965,159	CPFF
13	HR0011-12-C-0035	6/30/2012	DARPA-BAA-11-54	5/5/2011	3,715,340	CPFF
14	HR0011-12-C-0036	6/18/2012	DARPA-BAA-11-54	5/5/2011	6,287,697	FFP
15	HR0011-12-C-0037	5/11/2012	DARPA-BAA-11-54	5/5/2011	3,721,460	CPFF
16	HR0011-12-C-0038	5/15/2012	DARPA-BAA-11-54	5/5/2011	1,456,000	Cost
17	HR0011-12-C-0039	5/14/2012	DARPA-BAA-11-54	5/5/2011	7,193,322	CPFF
18	HR0011-12-C-0040	5/11/2012	DARPA-BAA-11-54	5/5/2011	2,673,845	CPFF
19	HR0011-12-C-0052	5/25/2012	DARPA-BAA-12-07	11/3/2011	6,248,565	CPFF

\*See the Legend on the last page of Appendix B

## Contracts Reviewed (cont'd)

	Contract	Contract Award Date	BAA	Original Publication Date of BAA	Value of Contract at Award, Including Options	Contract Type
20	HR0011-12-C-0053	3/28/2012	DARPA-BAA-12-07	11/3/2011	1,909,214	CPFF
21	HR0011-12-C-0054	4/3/2012	DARPA-BAA-12-07	11/3/2011	4,499,138	CPFF
22	HR0011-12-C-0055	4/2/2012	DARPA-BAA-12-07	11/3/2011	969,396	FFP
23	HR0011-12-C-0058	4/19/2012	DARPA-BAA-12-07	11/3/2011	2,319,613	CPFF
24	HR0011-12-C-0083	8/27/2012	DARPA-BAA-12-13	11/9/2011	6,079,843	CPFF
25	HR0011-12-C-0084	8/15/2012	DARPA-BAA-12-13	11/9/2011	2,000,922	CPFF
26	HR0011-12-C-0087	7/30/2012	DARPA-BAA-12-13	11/9/2011	1,199,824	Cost
27	HR0011-12-C-0092	8/30/2012	DARPA-BAA-12-13	11/9/2011	4,695,501	CPFF
28	HR0011-12-C-0093	8/6/2012	DARPA-BAA-12-13	11/9/2011	1,936,484	CPFF
29	HR0011-12-C-0095	8/17/2012	DARPA-BAA-12-13	11/9/2011	9,513,487	CPFF
30	HR0011-12-C-0074	6/18/2012	DARPA-BAA-12-15	12/5/2011	27,557,449	CPFF
31	HR0011-12-C-0086	8/14/2012	DARPA-BAA-12-19	12/13/2011	59,513,644	CPFF and CPIF
32	HR0011-12-C-0117	9/25/2012	DARPA-BAA-12-24	2/3/2012	6,276,279	CPFF
33	HR0011-12-C-0123	9/28/2012	DARPA-BAA-12-24	2/3/2012	8,727,422	CPFF
34	HR0011-13-C-0005	10/31/2012	DARPA-BAA-12-24	2/3/2012	10,928,471	CPFF
35	HR0011-12-C-0103	9/1/2012	DARPA-BAA-12-31	2/16/2012	2,787,422	Cost
36	HR0011-12-C-0104	9/17/2012	DARPA-BAA-12-31	2/16/2012	1,777,697	FFP
<b>Total Dollar Value of Contract at Award Including Options</b>					<b>\$ 426,358,063</b>	

### Legend

BAA Broad Agency Announcement  
 CPFF Cost-Plus-Fixed-Fee  
 CPIF Cost-Plus-Incentive-Fee  
 FFP Firm-Fixed-Price

## Appendix C

### Review of Broad Agency Announcements

In addition to reviewing the contracts awarded from the broad agency announcements (BAAs), we reviewed key aspects of the BAA requirements. Defense Advanced Research Projects Agency (DARPA) personnel complied with the Federal Acquisition Regulation (FAR) and DARPA internal policy requirements with a few exceptions related to the issuance of 9 BAAs that resulted in DARPA Contracts Management Office personnel awarding 36 contracts. Specifically, DARPA personnel complied with:

- FAR and DARPA internal policy BAA content requirements,
- FAR BAA competitive procedures requirements,
- DARPA internal policy requirements for BAA reviews and approvals before publication with a few minor exceptions, and
- FAR and DARPA internal policy requirements for BAA publication.

See the following table for compliant criteria.

*Table C. Adequate Compliance With FAR and DARPA Internal Policy Requirements*

Adequate Compliance Identified	Criteria
<b>FAR and DARPA Internal Policy BAA Content Requirements Were Met</b>	<p>FAR 35.016(b) states: The BAA, together with any supporting documents, shall:</p> <ol style="list-style-type: none"> <li>(1) Describe the agency's research interest;</li> <li>(2) Describe the criteria for selecting the proposals, their relative importance, and the method of evaluation;</li> <li>(3) Specify the period of time during which proposals submitted in response to the BAA will be accepted; and</li> <li>(4) Contain instructions for the preparation and submission of proposals.</li> </ol> <p>DI No. 20 "Soliciting, Evaluating, and Selecting Proposals under Broad Agency Announcements and Research Announcements," February 10, 2011 (DI No. 20) states: "At minimum, the DARPA program manager must include the following three criteria within the BAA: Overall Scientific and Technical Merit; Potential Contribution and Relevance to the DARPA Mission; and Cost Realism."</p> <p>DARPA Guide to Broad Agency Announcements and Research Announcements, February 2011 (DARPA Guide to BAAs and RAs) states: "The DARPA program managers must include in the BAAs that the proposals submitted must be subject to scientific review."</p>

\*See the Legend on the last page of Appendix C

Table C. Adequate Compliance With FAR and DARPA Internal Policy Requirements (cont'd)

Adequate Compliance Identified	Criteria
<b>FAR BAA Competitive Procedure Requirements Were Met</b>	<p>FAR 6.102(d)(2) states: “Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from –</p> <ul style="list-style-type: none"> <li>(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government’s needs; and</li> <li>(ii) A peer or scientific review.”</li> </ul> <p>FAR 35.016(a) “General” states: “This paragraph prescribes procedures for the use of the BAAs with Peer or Scientific Review (see 6.102(d)(2)) for the acquisition of basic and applied research and that part of development not related to the development of a specific system or hardware procurement. BAA’s may be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique shall only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.”</p>
<b>DARPA Internal Policy Requirements for BAA Reviews and Approvals Were Met</b>	<p>DI No. 20 requires:</p> <ul style="list-style-type: none"> <li>• the assigned Program Manager; Assistant Director/Program Management; Technical Office Director; General Counsel; the Program Director, Small Business Programs Office; Security &amp; Intelligence Directorate; the contracting officer; and the Director, CMO, DARPA to review the BAAs before issuance.</li> <li>• the Director, CMO, DARPA to approve BAAs before posting on Federal Business Opportunities.</li> </ul>
<b>FAR and DARPA Internal Policy BAA Publication Requirements Were Met</b>	<p>FAR 35.016(c) requires DARPA CMO personnel to publish the BAAs through the Governmentwide point of entry known as Federal Business Opportunities.</p> <p>FAR 5.203(e) states: “Agencies shall allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.”</p> <p>DARPA Guide to BAAs and RAs requires Program Specific BAAs to include a submission “cut-off” date that is within 6 months of the date of issuance.</p>

**Legend**

BAA	Broad Agency Announcement	DI	Defense Advanced Research Projects Agency Instruction
CMO	Contracts Management Office	FAR	Federal Acquisition Regulation
DARPA	Defense Advanced Research Projects Agency	RA	Research Announcements

# Appendix D

## Federal Acquisition Circular 2005-50 Issued on March 16, 2011

Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations 14543

This section intentionally left blank

DEPARTMENT OF DEFENSE  
GENERAL SERVICES  
ADMINISTRATION  
NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION  
48 CFR Parts 1, 2, 7, 16, 32, 42, and 50  
[FAC 2005-50; FAR Case 2008-030; Item  
I; Docket 2011-0082, Sequence 1]  
RIN 9000-AL78  
Federal Acquisition Regulation; Proper  
Use and Management of Cost-  
Reimbursement Contracts  
AGENCIES: Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).  
ACTION: Interim rule with request for  
comments.  
SUMMARY: DoD, GSA, and NASA are  
issuing an interim rule amending the  
Federal Acquisition Regulation (FAR) to  
implement section 864 of the Duncan  
Hunter National Defense Authorization  
Act for Fiscal Year 2009. This law aligns



# Federal Acquisition Circular 2005-50 Issued on March 16, 2011 (cont'd)

14544 Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save \$40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour).

**DATES:** *Effective Date:* March 16, 2011.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–50, FAR Case 2008–030, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2008–030” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2008–030.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2008–030” on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–50, FAR Case 2008–030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Lori Sakalos, Procurement Analyst, at (202) 208–0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–50, FAR Case 2008–030.

## SUPPLEMENTARY INFORMATION:

### I. Background

This case implements section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), enacted October 14, 2008. This law aligns with the President’s goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting.

Section 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council (Councils) should consider in amending the FAR—

(a) Circumstances when cost-reimbursement contracts are appropriate;

(b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and

(c) Acquisition resources necessary to award and manage a cost-reimbursement contract.

1. *Guidance on Cost-reimbursement contracts.* As required, the Councils included additional coverage at FAR subpart 16.1, Selecting Contract Types, and at subpart 16.3, Cost-Reimbursement Contracts, to provide further guidance as to when, and under what circumstances, cost-reimbursement contracts are appropriate. Therefore, this rule makes the following changes:

- FAR 16.103, Negotiating contract type, is amended to revise paragraph (d) to reflect additional documentation when other than a firm-fixed-price contract type is selected.

- FAR 16.104, Factors in selecting contract types, is amended to add a new paragraph (e) to provide guidance to the contracting officer to consider combining contract types if the entire contract cannot be firm fixed-price.

- FAR 16.301–2, Application, is amended to provide guidance to the contracting officer as to the circumstances in which to use cost-reimbursement contracts as well as outlining the rationale for documentation for selecting this contract type.

- FAR 16.301–3, Limitations, is amended to (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used, (2) ensure that all factors have been considered per FAR 16.104, and (3) ensure that adequate Government resources are available to award and manage this type of contract.

- FAR 7.104(e) also requires the designation of a properly trained contracting officer’s representative (COR) (or contracting officer’s technical representative (COTR)) prior to award of the contract or order.

2. *Identification of acquisition plan findings.* FAR 7.103, Agency-head responsibilities, is amended and renumbered to add new paragraphs 7.103(d), 7.103(f), and 7.103(j) to ensure that acquisition planners document the file to support the selection of the

contract type in accordance with FAR subpart 16.1; ensure that the statement of work is closely aligned with the performance outcomes and cost estimates; and obtain an approval and signature from the appropriate acquisition official at least one level above the contracting officer. FAR 7.105(b)(5)(iv) was added to discuss the strategy to transition from cost-reimbursement contracts to firm-fixed-price contracts. Although FAR 7.105(b)(5), Acquisition considerations, requires the acquisition plans to include a discussion of contract type selection and rationale, the Councils believe that a greater emphasis on the use of cost-reimbursement contracts should be added and included a new paragraph at FAR 7.105(b)(3), Contract type selection. Additionally, FAR 16.301–3(a) has been amended and renumbered.

3. *Acquisition workforce resources.* The Councils recognize that assigning adequate and proper resources to support the solicitation, award, and administration of other than firm-fixed-price contracts (cost-reimbursement, time-and-material, and labor-hour) contract is challenging. There is also great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts. Therefore, from the outset, contracting officers should be assured, to the greatest extent practicable, that the right resources in number, kind, and availability be assigned to support other than firm-fixed-price contracts. The Councils consider that greater accountability for the management and oversight of all contracts, especially other than firm-fixed-price contracts, can be gained and improved by requiring that properly trained CORs or COTRs (see FAR 2.101(b)(2), Definitions) be appointed before award. Therefore, FAR 7.104, General Procedures, and FAR 16.301–3(a)(4)(i) are amended to reflect that prior to award of a contract, especially on other than firm-fixed price contracts, at least one COR or COTR qualified in accordance with FAR 1.602–2 is designated. FAR 1.602–2, Responsibilities, is amended to add a new paragraph (d) outlining the requirement for the contracting officer to designate and authorize, in writing, a COR on contracts and orders, as appropriate. Additionally, a new section was added at FAR 1.604, Contracting officer’s representative, outlining the COR’s duties.

4. *Contract administration functions.* A new paragraph was added at FAR 42.302(a)(12) to require that the contracting officer determine the continuing adequacy of the contractor’s

## Federal Acquisition Circular 2005-50 Issued on March 16, 2011 (cont'd)

Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

14545

accounting system during the entire period of contract performance. Also, paragraph (a)(12) was added to the list of functions at FAR 42.302(a) that cannot be retained and that must be delegated by the contracting officer when delegating contract administration functions to a contract administration office in accordance with FAR 42.202(a).

### II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business entities and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–50, FAR Case 2008–030) in correspondence.

### IV. Paperwork Reduction Act

The changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and

compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, enacted October 14, 2008, directs that it must be implemented within 270 days from enactment. This rule is also urgent because this law requires the Inspector General to conduct a compliance review for each executive agency, one year after the regulations have been promulgated, on the use of cost-reimbursement contracts and include the results of their findings in the IG's next semiannual report. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: March 4, 2011.

**Millisa Gary,**  
*Acting Director, Office of Governmentwide Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.602–2 by adding paragraph (d) to read as follows:

#### 1.602–2 Responsibilities.

\* \* \* \* \*

(d) Designate and authorize, in writing, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. However, the contracting officer is not precluded from retaining and executing the COR duties as appropriate. *See* 7.104(e). A COR—

(1) Must be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the Office of Management and Budget memorandum entitled “The Federal Acquisition Certification for Contracting Officer Technical Representatives” dated November 26, 2007, or for DoD, DoD Regulations, as applicable;

(3) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(6) Must be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

■ 3. Amend section 1.603 by revising the section heading to read as follows:

#### 1.603 Selection, appointment, and termination of appointment for contracting officers.

\* \* \* \* \*

■ 4. Add section 1.604 to read as follows:

#### 1.604 Contracting Officer's Representative (COR).

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (*see* 1.602–2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (*see* 1.602–2(d)(4)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.

### PART 2—DEFINITIONS OF WORDS AND TERMS

■ 5. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition “Contracting officer's representative (COR)” to read as follows:

# Federal Acquisition Circular 2005-50 Issued on March 16, 2011 (cont'd)

14546 Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

## 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

*Contracting officer's representative (COR)* means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

\* \* \* \* \*

## PART 7—ACQUISITION PLANNING

- 6. Amend section 7.102 by adding paragraph (a)(3) to read as follows:

### 7.102 Policy.

(a) \* \* \*

- (3) Selection of appropriate contract type in accordance with part 16.

\* \* \* \* \*

- 7. Amend section 7.103 by—
- a. Redesignating paragraphs (e) through (w) as paragraphs (g) through (y);
- b. Redesignating paragraph (d) as paragraph (e);
- c. Adding a new paragraph (d);
- d. Revising newly redesignated paragraph (e);
- e. Adding a new paragraph (f); and
- f. Revising newly redesignated paragraph (j).

The added and revised text reads as follows:

### 7.103 Agency-head responsibilities.

\* \* \* \* \*

- (d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (e.g., other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

- (f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

\* \* \* \* \*

- (j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is

approved and signed at least one level above the contracting officer.

\* \* \* \* \*

- 8. Amend section 7.104 by adding paragraph (e) to read as follows:

### 7.104 General procedures.

\* \* \* \* \*

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. *See* 1.602–2(d).

- 9. Amend section 7.105 by—

- a. Removing from the first sentence of the introductory text the words “*see* paragraph (b)(19)” and adding the words “*see* paragraph (b)(21)” in their place;
- b. Redesignating paragraphs (b)(3) through (b)(21) as paragraphs (b)(4) through (b)(22), respectively;
- c. Adding a new paragraph (b)(3);
- d. Removing from newly redesignated paragraph (b)(5)(i) the words “contract type selection (*see* part 16);”;
- e. Removing from newly redesignated paragraph (b)(5)(ii)(A) the words “*see* 7.103(t)” and adding the words “*see* 7.103(v)” in its place; and
- f. Adding paragraph (b)(5)(iv).

The added text reads as follows:

### 7.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(3) *Contract type selection.* Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, *see* 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

\* \* \* \* \*

(5) \* \* \*

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract

requirements, e.g., contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract because a cost history will be developed for a recurring definitive requirement.

\* \* \* \* \*

## PART 16—TYPES OF CONTRACTS

- 10. Amend section 16.103 by revising paragraphs (d)(1) and (2) to read as follows:

### 16.103 Negotiating contract type.

\* \* \* \* \*

(d) \* \* \*

(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file.

- (i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (e.g., pre-award survey, or past performance information);

(B) The nature of the additional risks (e.g., inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (e.g.,

# Federal Acquisition Circular 2005-50 Issued on March 16, 2011 (cont'd)

Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

14547

complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

\* \* \* \* \*

■ 11. Amend section 16.104 by—

■ a. Redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively;

■ b. Adding a new paragraph (e);

■ c. Removing from newly redesignated paragraph (f) the words “incentives to ensure” and adding the words “incentives tailored to performance outcomes to ensure” in their place;

■ d. Removing from newly redesignated paragraph (g) the words “price adjustment terms” and adding the words “price adjustment or price redetermination clauses” in their place; and

■ e. Revising newly redesignated paragraph (i).

The added and revised text reads as follows:

## 16.104 Factors in selecting contract types.

\* \* \* \* \*

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

\* \* \* \* \*

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall

ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. *See* 42.302(a)(12).

\* \* \* \* \*

■ 12. Revise section 16.301–2 to read as follows:

## 16.301–2 Application.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (*see* 7.105); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (*see* 7.103(j) and 7.105). If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file. *See also* 16.103(d).

■ 13. Amend section 16.301–3 by revising paragraph (a) to read as follows:

## 16.301–3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in 16.104 have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(4) Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (*see* 7.104(e)) including—

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602–2 has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

\* \* \* \* \*

## PART 32—CONTRACT FINANCING

### 32.1007 [Amended]

■ 14. Amend section 32.1007 by removing from paragraph (a) “(*see* 42.302(a)(12))” and adding “(*see* 42.302(a)(13))” in its place.

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 15. Amend section 42.302 by—

■ a. Removing from the introductory text of paragraph (a) the words “paragraphs (a)(5), (a)(9), and (a)(11)” and adding the words “paragraphs (a)(5), (a)(9), (a)(11), and (a)(12)” in their place;

■ b. Redesignating paragraphs (a)(12) through (a)(26) as paragraphs (a)(13) through (a)(27); and

■ c. Adding a new paragraph (a)(12) to read as follows:

## 42.302 Contract administration functions.

(a) \* \* \*

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS), affect the quality and validity of the contractor data upon which the Government must rely for its management oversight of the contractor and contract performance.

\* \* \* \* \*

## PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

### 50.205–1 [Amended]

■ 16. Amend section 50.205–1 by removing from the first sentence in paragraph (b) the words “(*see* FAR 7.105(b)(19)(v))” and adding the words “(*see* 7.105(b)(20)(v))” in their place.

[FR Doc. 2011–5552 Filed 3–15–11; 8:45 am]

BILLING CODE 6820-EP-P

## Appendix E

### Deficiencies Identified in Contracts Reviewed

	Contract	Scientific Review Process		Cost-Reimbursement Interim Rule		
		Evaluation Reports and Program Manager Summaries Not Detailed	Appropriate Funding Approval Not Obtained	No Discussion of Plans to Transition to Firm-Fixed-Price Contracts	Approval Not Obtained for Contract Type Selection	Inadequate Determination of the Acceptability of the Contractor's Accounting System
1	HR0011-11-C-0142		√	√	√	
2	HR0011-11-C-0150		√	N/A	N/A	N/A
3	HR0011-12-C-0014	√ <sup>1</sup>	√	√	√	√ <sup>6</sup>
4	HR0011-12-C-0015	√ <sup>1</sup>	√	√	√	
5	HR0011-12-C-0016	√ <sup>1</sup>	√	√	√	
6	HR0011-12-C-0017	√ <sup>1</sup>	√	√	√	
7	HR0011-11-C-0138			√	√	√ <sup>5</sup>
8	HR0011-11-C-0139	√ <sup>2</sup>		√	√	
9	HR0011-12-C-0019	√ <sup>2</sup>		√	√	
10	HR0011-12-C-0048		√	√	√	
11	HR0011-12-C-0028	√ <sup>1, 3, 4</sup>		√	√	
12	HR0011-12-C-0034	√ <sup>1, 2, 4</sup>		√	√	√ <sup>5</sup>
13	HR0011-12-C-0035	√ <sup>1, 2, 4</sup>		√	√	√ <sup>5</sup>
14	HR0011-12-C-0036	√ <sup>1, 3, 4</sup>		N/A	N/A	N/A
15	HR0011-12-C-0037	√ <sup>1, 3, 4</sup>		√	√	√ <sup>5</sup>
16	HR0011-12-C-0038	√ <sup>1, 3, 4</sup>		√	√	
17	HR0011-12-C-0039	√ <sup>1, 3, 4</sup>		√	√	√ <sup>5</sup>
18	HR0011-12-C-0040	√ <sup>1, 2, 3, 4</sup>		√	√	
19	HR0011-12-C-0052	√ <sup>1, 2</sup>	√	√	√	√ <sup>6</sup>
20	HR0011-12-C-0053	√ <sup>1, 2</sup>	√	√	√	

Footnotes used throughout Appendix E are defined on the final page of Appendix E.



## Deficiencies Identified in Contracts Reviewed (cont'd)

	Contract	Scientific Review Process		Cost-Reimbursement Interim Rule		
		Evaluation Reports and Program Manager Summaries Not Detailed	Appropriate Funding Approval Not Obtained	No Discussion of Plans to Transition to Firm-Fixed-Price Contracts	Approval Not Obtained for Contract Type Selection	Inadequate Determination of the Acceptability of the Contractor's Accounting System
21	HR0011-12-C-0054	√ <sup>1, 2</sup>	√	√	√	√ <sup>6</sup>
22	HR0011-12-C-0055	√ <sup>1, 2</sup>	√	N/A	N/A	N/A
23	HR0011-12-C-0058	√ <sup>1, 2</sup>	√	√	√	√ <sup>5</sup>
24	HR0011-12-C-0083	√ <sup>2</sup>		√	√	√ <sup>6</sup>
25	HR0011-12-C-0084	√ <sup>2, 3</sup>		√	√	√ <sup>6</sup>
26	HR0011-12-C-0087	√ <sup>2, 3</sup>		√	√	
27	HR0011-12-C-0092	√ <sup>3</sup>		√	√	
28	HR0011-12-C-0093	√ <sup>2</sup>		√	√	
29	HR0011-12-C-0095			√	√	
30	HR0011-12-C-0074	√ <sup>1</sup>		√	√	
31	HR0011-12-C-0086			√	√	√ <sup>5</sup>
32	HR0011-12-C-0117			√	√	
33	HR0011-12-C-0123	√ <sup>1</sup>		√	√	
34	HR0011-13-C-0005	√ <sup>1</sup>		√	√	√ <sup>6</sup>
35	HR0011-12-C-0103	√ <sup>1</sup>		√	√	
36	HR0011-12-C-0104			N/A	N/A	N/A
	<b>Totals</b>	<b>28</b>	<b>12</b>	<b>32</b>	<b>32</b>	<b>13</b>

√ Did not meet requirement

N/A Firm-Fixed-Price contracts are exempt from this requirement

<sup>1</sup> Evaluation report contained non-detailed responses

<sup>2</sup> Evaluation report contained blank evaluation criteria

<sup>3</sup> Evaluation report contained only "adjectival descriptions," such as "Good" or "Excellent"

<sup>4</sup> Program Manager Summary Sheet did not provide adequate rationale to support proposal selectability and funding recommendations

<sup>5</sup> Price Negotiation Memorandum stated that the contractor's accounting system was adequate, but the statement was not substantiated

<sup>6</sup> No information contained within the Price Negotiation Memorandum about the adequacy of the contractor's accounting system



## Management Comments

### Defense Advanced Research Projects Agency Comments




**DEFENSE ADVANCED RESEARCH PROJECTS AGENCY**  
675 NORTH RANDOLPH STREET  
ARLINGTON, VA 22203-2114

**AUG 13 2013**

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL  
(ATTN: PROGRAM DIRECTOR, ACQUISITION AND CONTRACT  
MANAGEMENT)

SUBJECT: DoDIG Audit, D2013-D000CG-0055.000, "Improvements Needed at the Defense  
Advanced Research Projects Agency When Evaluating Broad Agency  
Announcement Proposals"

Management comments in response to this audit are attached. If you have any questions  
or concerns regarding DARPA's comments, please contact [REDACTED]

  
Steven H. Walker, Ph.D.  
Acting Director

Attachment:  
As stated

## Defense Advanced Research Projects Agency Comments (cont'd)

DoD Office of Inspector General Audit D2013-D000CG-0055.000  
“Improvements Needed at the Defense Advanced Research Projects Agency When Evaluating  
Broad Agency Announcement Proposals”

Each of the internal control weaknesses discussed in the report will be addressed as stated in DARPA’s responses below.

**Recommendation 1:** Establish controls to verify that technical office personnel meet internal requirements for providing:

- a. Detailed, substantive narratives in evaluation reports that adequately support proposal selectability determinations, requesting revisions to evaluation reports when necessary, and conducting training to reemphasize this internal requirement.
- b. Program Manager Summary Sheets that adequately support proposal selectability determinations, requesting revisions to Program Manager Summary Sheets when support is not adequate, and conducting training to reemphasize this internal requirement.

**DARPA Response:** Concur. DARPA will amplify policy and procedures as well as provide additional training to members of the Scientific Review Team at key points in the scientific review process.

**Recommendation 2:** Reemphasize the internal requirement that Scientific Review Officials and Delegate Scientific Review Officials are required to approve the Advanced Research Projects Agency Order Procurement Guidance document for contract funding.

**DARPA Response:** Concur with the intent of this recommendation. DARPA recently transitioned to the Defense Agencies Initiative (DAI) financial system. DAI replaces the Advanced Research Projects Agency Order Procurement Guidance form with a Military Interdepartmental Purchase Request (MIPR). DARPA will improve internal controls relative to approval of MIPRs.

**Recommendation 3:** Establish procedures requiring Contracts Management Office personnel to provide written support within the contract file explaining either plans to minimize the use of other than firm-fixed price contracts on future acquisitions for the same requirement or why the particular effort cannot transition in the future within the Defense Advanced Research Projects Agency to firm-fixed-price contracts, in accordance with the Federal Acquisition Regulation 16.103(d)(1)(iv)(D).

**DARPA Response:** Concur with the intent of this recommendation. DARPA will establish a written procedure addressing this finding. The procedure will provide the contracting officer with the option to include a memo for record in the contract file stating that no follow-on award within DARPA is anticipated for this science and technology (S&T) effort; therefore, no opportunity to transition to a firm-fixed-price contract exists.

## Defense Advanced Research Projects Agency Comments (cont'd)

**Recommendation 4:** Establish procedures requiring contracting officers to obtain approval of the cost-reimbursement contract type at least one level above the contracting officer, as required by the Federal Acquisition Regulation 16.301-3(a)(2).

**DARPA Response:** Concur. DARPA will establish procedures requiring contracting officers to obtain approval of cost-reimbursement contracts at least one level above the contracting officer.

**Recommendation 5:** Reemphasize to contracting officers the Federal Acquisition Regulation requirement to appropriately complete and document the determination of the adequacy of the contractor's accounting system in the contract file, as required by the Federal Acquisition Regulation 16.104(i), "Adequacy of the contractor's accounting system."

**DARPA Response:** Concur. DARPA will reemphasize this requirement in internal procedures and include the requirement for such documentation in a memo for record to be included in the official contract file.

## Acronyms and Abbreviations

---

<b>ARPA</b>	Advanced Research Projects Agency
<b>BAA</b>	Broad Agency Announcement
<b>CMO</b>	Contracts Management Office
<b>DARPA</b>	Defense Advanced Research Projects Agency
<b>DI</b>	Defense Advanced Research Projects Agency Instruction
<b>FAR</b>	Federal Acquisition Regulation
<b>FFP</b>	Firm-Fixed-Price
<b>RA</b>	Research Announcement
<b>SRO</b>	Scientific Review Official

# **Whistleblower Protection**

## **U.S. DEPARTMENT OF DEFENSE**

*The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD IG Director for Whistleblowing & Transparency. For more information on your rights and remedies against retaliation, go to the Whistleblower webpage at [www.dodig.mil/programs/whistleblower](http://www.dodig.mil/programs/whistleblower).*

## **For more information about DoD IG reports or activities, please contact us:**

### **Congressional Liaison**

Congressional@dodig.mil; 703.604.8324

### **DoD Hotline**

1.800.424.9098

### **Media Contact**

Public.Affairs@dodig.mil; 703.604.8324

### **Monthly Update**

dodigconnect-request@listserve.com

### **Reports Mailing List**

dodig\_report-request@listserve.com

### **Twitter**

[twitter.com/DoD\\_IG](https://twitter.com/DoD_IG)



DEPARTMENT OF DEFENSE | INSPECTOR GENERAL

4800 Mark Center Drive  
Alexandria, VA 22350-1500  
[www.dodig.mil](http://www.dodig.mil)  
Defense Hotline 1.800.424.9098

